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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,847	04/27/2006	Giovanni Cipoletti	207,567	6763
7590 11/09/2007				
Jay S. Cinamon Abelman, Frayne and Schwab 666 Third Avenue New York, NY 10017-5621				
			EXAMINER KOSAR, AARON J	
			ART UNIT 1651	PAPER NUMBER
			MAIL DATE 11/09/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/577,847	Applicant(s) CIPOLETTI ET AL.	
	Examiner Aaron J. Kosar	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
- 2a) ☐ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Restriction is required under 35 U.S.C. 121 and 372.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

**The species are as follows:**

- (a) *milk or milk serum;*
- (b) *Streptococcus thermophilus, Lactobacillus bulgaricus, or Lactobacillus casei, lactic ferments, or yoghurt ferments; and*
- (c) " $\text{OH}^-$ ": *sodium hydroxide (NaOH), potassium hydroxide (KOH), or calcium hydroxide ( $\text{Ca}(\text{OH})_2$ )*
- (c') " $\text{CO}_3^{2-}$ ": *calcium carbonate ( $\text{CaCO}_3$ ), or*
- (c'') " $\text{NH}_3$ ": *ammonia ( $\text{NH}_3$ ).*

Applicant is required, in reply to this action, to elect a single species, from each of species (a) and species (b), and a single species selected from strong base (c) *or* weak bases (c') *or* (c'') above, to which the claims shall be restricted if no generic claim is finally held to be allowable.

If Applicant elects a lactic ferment or a yoghurt ferment from species (b) above, Applicant is required to further elect the species of non-modified microorganism comprising the elected fermentate *or* if Applicant elects a single taxonomic species of microorganism from elected species (b) above, Applicant may further elect either the single species of microorganism *or* a single combination of species from species group (b) which form a single mixture of bacteria (e.g. the multi-organismal composition: *S. thermophilus* and *L. casei*). Applicant is also

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required to pick a single species of inorganic strong base: (c) ("OH") or weak base: (c')("CO<sub>3</sub><sup>2-</sup>") or (c'')("NH<sub>3</sub>").

The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:  
The genus of starting material (claims 1 and 19) corresponds to the species of milk (claim 1) and milk serum (claims 1 or 19). The genus of *strong base* (claims 1 or 19, in part) corresponds to the species NaOH, KOH, and Ca(OH)<sub>2</sub>. The genus of *weak base* (claims 1 or 19, in part) corresponds to the species of CaCO<sub>3</sub> and NH<sub>3</sub>. The genus of *non-modified microorganism* (claims 1 or 19) corresponds to the species *Streptococcus thermophilus*, *Lactobacillus bulgaricus*, or *Lactobacillus casei* and to the species of microorganisms comprising *lactic ferments* or *yoghurt ferments*.

The following claim(s) are generic:

Claims 1 is generic. Claim 19 is generic with respect to species (a) in part (milk serum), (b), and (c-c').

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The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

According to PCT Rule 13.2 and the guidelines in Section (f)(i)(B)(1) of Annex B of the PCT Administrative Instructions, all alternatives of a Markush Group must have a common structure. Although the species of compositions/chemical compounds share a common property/activity of being dairy products or microorganisms or strong/weak bases, the compounds/organisms are not regarded as being of similar nature because all of the alternatives do not share a common structure. The species of milk and milk serum are distinct chemical entities and thus do not share a conserved structure. Each species of microorganism, lacking a recited conserved structure among species, do not share a common structure. Also each species of strong/weak base does not share a common structure as the recited strong inorganic bases are hydroxide (oxygen-based) compositions whereas the recited weak bases are carbonate and ammonia (carbonate- and nitrogen-based) compounds. Thus unity of invention among the species is lacking and restriction is deemed proper.

#### ***Joint Inventors***

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

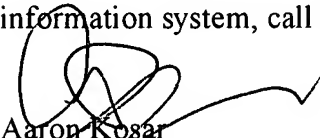
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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Kosar whose telephone number is (571) 270-3054. The examiner can normally be reached on Monday-Thursday, 7:30AM-5:00PM, ALT. Friday, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Aaron Kosar  
Examiner, Art Unit 1651

  
SANDRA E. SAUCIER  
PRIMARY EXAMINER